

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

ELLEN ALLICKS d/b/a ALLICKS)
EXCAVATING, et al.,)
on behalf of themselves)
and others similarly situated,)
Plaintiffs,)
v.) Case No. 4:19-cv-01038
OMNI SPECIALTY PACKAGING, LLC,)
et al.,)
Defendants.)

**PARTIES' JOINT MOTION FOR PRELIMINARY APPROVAL
OF PROPOSED CLASS-ACTION SETTLEMENT**

COME NOW Plaintiffs Adam Sevy, Shawn Hornbeck, Arno Graves, Ron Nash, Todd Vohs, Wayne Rupe, David Guest, Brian Nelms, Robert Thiry, Larry Muhs, Anthony Shaw, Rusty Shaw, Tim Sullivan, Roger Bias, Robert Withrow, and Ellen Allicks d/b/a Allicks Excavating (“Plaintiffs”) and Defendants Omni Specialty Packaging, LLC, Ozark Automotive Distributors, Inc., and O’Reilly Automotive Stores, Inc. d/b/a O’Reilly Auto Parts (sometimes referred to herein collectively as the “Defendants”) (each a “Party,” and together the “Parties”), by and through their respective undersigned counsel, and move the Court for an Order preliminarily approving the Parties’ Settlement Agreement and Release filed herewith. In support of their Joint Motion, the Parties respectfully states as follows:

1. On or about February 24, 2020, the Parties entered into the Settlement Agreement and Release in this matter (the “Settlement Agreement”). The Settlement Agreement makes substantial monetary and non-monetary relief available to approximately 285,500 or more members of the proposed settlement class comprised of persons and entities who purchased

O'Reilly 303 Tractor Hydraulic Fluid in any state in the United States, excluding Missouri, during the Class Period. The Settlement Agreement, with the following exhibits thereto, is attached as Exhibit 1 to this Joint Motion:

Exhibit A – Preliminary Approval Order

Exhibit B – Final Approval Order

Exhibit C -- Mailed Class Notice

Exhibit D – Summary Class Notice

Exhibit E – Long Form Class Notice

Exhibit F – Claim Form and Instructions

Exhibit G – Request for Correction Form and Instructions

(See Settlement Agreement and Release, Exhibit 1.)

2. Pursuant to the Settlement Agreement, the Parties now respectfully request that the Court enter an Order, in substantially the form of the proposed Preliminary Approval Order attached hereto as Exhibit 2, ruling, in summary, as follows:

- (a) Preliminarily approving the terms and conditions set forth in the Settlement Agreement, including all exhibits thereto, as fair, reasonable, and adequate.
- (b) Conditionally certifying, for settlement purposes only, the following settlement class: "All persons and other entities who purchased O'Reilly 303 Tractor Hydraulic Fluid during the Class Period, as defined below, in the United States, excluding purchases made in Missouri, and also excluding purchases made for resale." The Settlement Class also excludes Defendants, including any parent, subsidiary, affiliate or controlled person of Defendants; Defendants' officers, directors, agents, employees and their immediate family members; as well as the

judicial officers assigned to this litigation and members of their staffs and immediate families. As explained in more detail in the Settlement Agreement and Suggestions in Support of this Joint Motion, the Class Period is determined by the longest applicable statute of limitations available under the law of the state in which a unit of O'Reilly 303 Tractor Hydraulic Fluid is purchased, with respect to claims for breach of warranty, fraud, unjust enrichment, personal property damage, and for violation of any applicable consumer-protection statute. The specific "Class Period" for each state in which O'Reilly 303 Tractor Hydraulic Fluid was purchased, excluding Missouri, is set forth in Appendix A to the Settlement Agreement and Release.

(c) Conditionally finding, for settlement purposes only and conditioned upon entry of the Final Order and Judgment, and the occurrence of the Effective Date (as defined in the attached Settlement Agreement), that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of members of the Settlement Class is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Plaintiffs are typical of the claims of the Settlement Class for purposes of settlement; (d) Plaintiffs have fairly and adequately represented the interests of the Settlement Class and will continue to do so, and Plaintiffs have retained experienced counsel to represent them; (e) the questions of law and fact common to the members of the Settlement Class predominate over any questions affecting any individual members of the Settlement Class; and (f) a class action is superior to the other available methods

for the fair and efficient adjudication of the controversy.

- (d) Appointing Tom Bender and Dirk Hubbard from the law firm Horn Aylward & Bandy, LLC; Gene Graham, William Carr, and Bryan White from the law firm of White, Graham, Buckley & Carr, LLC; Clayton Jones of the Clayton Jones Law Firm, Paul D. Lundberg of the Lundberg Law Firm in Sioux City, Iowa; Rhon E. Jones and Tucker Osborne of Beasley, Allen, Crow, Methvin, Portis & Miles in Montgomery, Alabama; John G. Emerson of Emerson Firm, PLLC in Little Rock, Arkansas and Houston, Texas; Mark P. Bryant and N. Austin Kennedy of the Bryant Law Center, PSC in Paducah, Kentucky; Jon D. Robinson, Shane M. Mendenhall, Joshua G. Rohrscheib, and Zachary T. Anderson of Bolen, Robinson, & Ellis, LLP in Decatur, Illinois; and, Travis Griffith of Griffith Law Center, PLLC in Charleston, West Virginia, as counsel for the Settlement Class (“Class Counsel”).
- (e) Designating named Plaintiffs Adam Sevy, Shawn Hornbeck, Arno Graves, Ron Nash, Todd Vohs, Wayne Rupe, David Guest, Brian Nelms, Robert Thiry, Larry Muhs, Anthony Shaw, Rusty Shaw, Tim Sullivan, Roger Bias, Robert Withrow, and Ellen Allicks d/b/a Allicks Excavating as representatives of the Settlement Class.
- (f) Appointing RG/2 Claims Administration LLC to serve as the Settlement Administrator.
- (g) Setting a Final Fairness Hearing (as defined in the attached Settlement Agreement) to be held before this Court to determine whether the terms and conditions forth in the Settlement Agreement are fair, reasonable, and adequate and should receive

final approval.

(h) Staying, pending the Final Fairness Hearing, all proceedings in this action, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement.

(i) Approving the Mailed Class Notice (Exhibit 1-C), Summary Class Notice (Exhibit 1-D), Long Form Class Notice (Exhibit 1-E), Claim Form and Instructions (Exhibit 1-F), Request for Correction Form and Instructions (Exhibit 1-G), together with the publication notice plan and documents, and the settlement administration process, all set forth in Settlement Agreement and the Declaration of William W. Wickersham, filed herewith as Exhibit 3, including the exhibits thereto; finding that the proposed notice plan it is the best practicable notice under the circumstances, it provides individual notice to all Settlement Class Members who can be identified through a reasonable effort, and it is reasonably calculated, under all the circumstances, to apprise the members of the Settlement Class of the pendency of this action, the terms of the settlement, and their right to object to the settlement or exclude themselves from the Settlement Class.

(j) Approving the timetable and process for exclusion from the Settlement Class or objection to the Settlement by any Settlement Class Member.

(k) Approving the timetable and process for Class Counsel to file their application for expenses and attorneys' fees.

3. In further support of the adequacy and appropriateness of the Parties' notice plan, the declaration of, William W. Wickersham, a representative of proposed Settlement Administrator RG/2 Claims Administration LLC, is attached hereto as Exhibit 3.

4. In addition, orders preliminarily and finally approving the class-action settlement in *Miller v. O'Reilly Automotive, Inc.*, Case No. 18-00687-CV-W-ODS (W.D. Mo.), arising out the purchase of O'Reilly 303 Tractor Hydraulic Fluid in Missouri—the same product underlying Plaintiffs' claims in this action—are attached hereto as Exhibit 4 and Exhibit 5, respectively, for ease of reference.

5. In further support this Joint Motion, Plaintiffs file concurrently herewith their Memorandum in Support of Joint Motion for Preliminary Approval of Proposed Class-Action Settlement.

WHEREFORE, Plaintiffs and Defendants respectfully request that the Court enter the proposed Preliminary Approval Order attached hereto as Exhibit 2 and grant the Parties such other and further relief as is just and proper.

Date: April 6, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document was filed electronically with the United States District Court for the Western District of Missouri, with notice of case activity to be generated and sent electronically by the Clerk of the Court to all designated persons this 6th day of April, 2020.

/s/ *Dirk Hubbard*